IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Crl.Rev.Pet.No. 3386 of 2007()

ST.1883/06 OF SPECIAL JFCM(MARAD CASES), KOZHIKODE

REVN. PETITIONER: PETITIONER/ACCUSED:

U. SEETHIKUTTY, S/O.MUHAMMED,
ULLATTIL, CHEMMALATHUR ROAD, KUTTIKKATTOOR.

BY ADV. SRI.R.SUDHISH

RESPONDENTS: COMPLAINANT & STATE:

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1. P. SUNDARAN, S/O. SANKARANKUTTY,
KUTHIRAVATTAPARAMBIL, KUTHIRAVATTOM AMSOM,DESOM,
KOTHAKKAD TALUK, KOZHIKODE.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3386 OF 2007

Dated this the 19th day of September, 2007

O R D E R

The revision petitioner, who is the accused in S.T.No.1883/2006 on the file of the Special JFCM(Marad Cases), Kozhikode for an offence punishable under section 138 of the Negotiable Instruments Act, 1881, in respect of a cheque for a sum of Rs.8,25,000/-, challenges the order dated 7.8.07 passed by the Magistrate dismissing his application (CMP.No.4688/07) seeking a discharge on the ground that the matter has been settled between the accused and the complainant.

2. The request for discharge and dismissal of the complaint under section 255(1) was rightly turned down by the Magistrate since even the proof affidavit of the complainant had not been filed before the court and the evidence is yet to be started. The power of the court under section 255(1) could be exercised only after taking the evidence. The court at that stage is not entitled to look into the documents produced by the accused. Hence, the Magistrate was fully justified in dismissing the application for discharge. This revision, therefore, fails and is accordingly dismissed without prejudice to the right of the revision petitioner to move the Magistrate at the appropriate stage.

(V. RAMKUMAR, JUDGE)

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